No. 14334.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

CHARLES B. SMITH, as Special Administrator of the Estate of EDWARD S. BIRD, Deceased,

Appellant,

vs.

MILTON SPERLING, HARRY M. WARNER, JACK L. WARNER, UNITED STATES PICTURES, INC. and WARNER BROTHERS PICTURES, INC.,

Appellees.

APPELLANT'S OPENING BRIEF.

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TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

Rules

Statutes

Textbooks

INDEX TO APPENDICES

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Introductory Statement.

Appellant Charles B. Smith, the plaintiff in a derivative stockholders suit, appeals from a final judgment rendered in favor of the defendants-appellees. The judgment was rendered by the United States District Court for the Southern District of California, Central Division.

The original plaintiff was Edward S. Birn, a stockholder of appellees Warner Brothers Pictures, Inc. He died while the action was pending. Appellant Smith was appointed special administrator and duly substituted as the plaintiff.

Jurisdiction.

Jurisdiction was grounded on diversity of citizenship of the parties. U. S. C. A. 1332. Plaintiff Birn was a citizen of New York. The defendants are all citizens of other states: Warner Brothers Pictures Company is a Delaware corporation; United States Pictures, Inc., is also a Delaware corporation; Harry Warner, Jack Warner and Milton Sperling are citizens of California. These facts are pleaded [R. 3-4]; they are not in dispute and have been found [R. 73].

The complaint contains three causes of action. The third cause was dismissed by consent of the parties. It is not an issue in this case. The District Court destroyed diversity of citizenship of the parties to the first cause. It realigned the parties, placed defendant Warner Brothers Pictures Company alongside plaintiff [R. 79]; and having thus arrayed one Delaware corporation against another Delaware corporation, thereupon dismissed the first cause of action for failure of jurisdiction [R. 80-81].

No question of jurisdiction is raised with respect to the second cause. United States Pictures is not named as a defendant in that cause of action [R. 11-12].

Final judgment dismissing both causes of action was entered on January 21, 1954 [R. 81-82]. Notice of appeal was duly filed on February 17, 1954 [R. 101]. Jurisdiction to review the judgment appealed from is conferred upon this Court by 28 U. S. C. A. 1291.

Statement of the Case.

Warner Brothers Pictures, Inc. (hereinafter referred to as "Warner") owns vast motion picture studios in Burbank, California. These house a variety of Warner's facilities and a large personnel employed in picture making. Warner has been producing motion pictures in these studios for many years. The company is publicly owned. Plaintiff Birn was one of its stockholders.

Harry, Jack and Albert Warner are brothers. Their combined stockholdings in Warner give them a working control of the company: between them, they own between fifteen and twenty per cent of its stock. The rest is distributed among some 30,000 shareholders, located all over the world. The brothers direct the supervision, business and policies of Warner. Harry Warner is its president and chief executive.

United States Pictures, Inc. (hereinafter referred to as "United") is wholly owned by Harry Warner's immediate family, namely, Milton Sperling, and his two infant children. Sperling is Harry Warner's son-in-law. The children are Harry Warner's grandchildren.

Since September 28, 1945, corporations Warner and United have engaged in a joint venture in motion picture production-distribution. Since that day, Warner has made these studios, its facilities, personnel and Warner capital available to the joint venture, to an extent approximating some 10 million dollars.

The terms of the venture have not been constant. They were changed from time to time: A *series* of Warner-United contracts (all in evidence), entered into successively, record a succession of *material* and *substantial* changes in the respective rights and obligations of the venturers [Exs. 1, 3, 4, 5, 7, 107 Schedule H].

Some of these contracts to wit: Exhibits 1, 3, 4 and 5, were executed by Warner and United *before* the action was commenced; others, during its pendency.

Appellant's decedent commenced this derivative action on December 15, 1948 [R. 16]. The venture had then been in operation for three years.

The gist of appellant's position in the controversy is that Warner, its facilities, personnel and its capital have been unlawfully used to unjustly enrich Harry Warner's immediate family; that these Warner-United contracts are unlawful and unfair to Warner; that they were performed in a manner unfair to Warner; that they were not "arm's length" transactions; that Harry Warner, as Warner's president, fathered the venture and that terms of these contracts were negotiated by him with his son-in-law Sperling; that self-dealing and overreaching to favor Harry Warner's family at Warner's expense and risk permeated Warner-United dealings; that appellees Harry and Jack Warner were disloyal to their trusts; that Harry Warner's family has been unjustly enriched at Warner's expense; that under the circumstances the "business judgment rule" is not applicable; that a court of equity has the power to and should scrutinize the Warner-United transactions and grant appropriate relief.

Although the suit was brought for its benefit, Warner and the officers and directors who administer its affairs

have been avowedly and admittedly hostile and opposed to its objects. It appeared by the same counsel as represent the brothers Warner who are charged with disloyalty [R. 26]; in the joint answer which was filed [R. 20], and throughout the litigation, Warner took the position (1) it has not been unlawfully or unfairly dealt with; (2) if it has, it lost all right to relief in the premises because of the bar of the Statutes of Limitations of California, New York and Delaware.

In discovery proceedings, following the joinder of issue, Appellant uncovered additional details of Warner-United dealings had both *before* and after the filing of the suit, and Appellant thereupon applied for leave to file an amended and supplemental complaint [R. 36]. The motion was denied without prejudice and with leave to renew [R. 50-51].

Appellant stockholder and Appellee Warner did not collude with the object of creating a controversy between citizens of different states. It is undisputed that it would have been futile for Appellant's decedent to demand of the corporation that it bring this action. Such demand would have been refused [R. 588]. The District Court so found [R. 586-588]; and bringing about concerted action by Warner's stockholders would have been virtually impossible and impractical in view of the fact, equally undisputed, namely, that they number some 30,000 persons located all over the world [R. 120].

The District Court had ordered that only two issues be tried, namely, (1) the Court's jurisdiction; (2) Appellees' plea in bar, to wit, the said statutes of limitations. The parties were directed to present evidence on those two issues *only* [Findings, R. 72].

Following a trial on those two issues, the District Judge filed an opinion in which he concluded (1) to change Warner's position in the suit from defendant to plaintiff, and to align it as such; (2) to dismiss the first cause of action (in which United is a defendant) for failure of jurisdiction; (3) to dismiss the second cause of action (in which United is *not* named as a defendant) on the ground that the exclusion of United as a defendant renders that cause "without equity" (117 Fed. Supp. 781).

The *District Court did not pass upon the merits of the controversy* [R. 81]. In disposing of the first cause of action as aforesaid, the District Judge isolated the *first* of the Warner-United contracts [Ex. 1] from the *series* of such contracts in evidence and with respect thereto, found, in substance [R. 74-75]: that an eleven man Warner board of directors exercising independent business judgment, not dominated by the brothers Warner, "intended" that *particular* contract to be of benefit to the company; "considered" it to be a sound business arrangement; approved it in good faith; found that the company is not in hands antagonistic to its "financial interests" and thereupon concluded, as a matter of law, that Warner is not a defendant but is a plaintiff in the cause; that it should be realigned as such; that since both Warner and United are Delaware corporations, diversity of citizenship does not exist and the cause must accordingly be dismissed for failure of jurisdiction [R. 77].

A series of material facts proven by Appellant and *not disputed* by Appellees are omitted from the District Court's findings. These facts are included in the narrative of the evidence, *infra*.

In disposing of the second cause of action as aforesaid, the District Judge found, in substance [R. 77-78], that *complete relief* cannot be accorded because United is not named as a party defendant in said cause; that United's interest in the controversy is of such a nature that a final decree cannot be made without affecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity, and for those reasons the cause is "without equity."

The District Court's failure to include in its findings undisputed material facts in evidence as well as its findings and conclusions were duly objected to by Appellant [R. 57-71].

Judgment dismissing both causes of action was entered. Thereupon, Appellant moved to amend the pleadings to conform to the proof [R. 84-85]. The motion was denied [R. 100]. Appellant appealed to this Court [R. 101].

The Evidence.

For many years before and since Warner and United became joint venturers, Warner has been making motion pictures in its Burbank studios [R. 117]. The physical product consists of prints of motion pictures, put up in cans [R. 118].

Warner *subsidiaries* and affiliated companies exploit the pictures and distribute them: they book and contract for the rental of the prints to exhibitors throughout the world; they publicize and advertise the pictures and collect the rentals [R. 118-119].

Warner Management.

The brothers Warner direct the supervision of Warner's business and its policies [R. 112]. Harry Warner is Warner's president. He and Jack Warner, a vice-president, reside in California, have charge of company matters on the West coast, and Albert Warner, a vice-president, who resides in New York, attends to company matters in the East [R. 119-120]. Meetings of the Warner board of directors are held in New York. No stengraphic notes are taken of the proceedings. Minutes are kept. Albert Warner generally presides (except when Harry is present) and voices collective recommendations of the brothers [R. 151-152, 193].

Up to September 25, 1945, to wit: three days before Warner and United signed their first contract (the subject of the District Court's findings), eleven gentlemen composed the Warner board, namely, Messrs. Friedman, Perkins, Wolf, Guggenheimer, Carlisle, Schneider, Catchings, Bernhard and the three Warner brothers [R. 27].

The first four directors above named are Warner's lawyers [R. 120]: Mr. Friedman is a salaried employee. Warner paid him an annual salary of $66,000.00. Mr. Perkins is a salaried employee. He is Warner's general counsel. His annual salary is $66,000.00. Mr. Wolf is the senior member of a law firm which renders professional services to Warner. In 1945, Warner paid this firm $21,000.00. Mr. Guggenheimer is the senior member of a law firm which is under retainer to Warner. In 1945, Warner paid this firm $10,000.00 for professional services.

Directors Carlisle, Schneider and Bernhard were salaried employees [R. 120-121]. Carlisle's annual salary

was $48,200.00; Schneider's salary was $78,900.00; Bernhard's salary was $157,100.00. Director Catchings was not on the company's payroll [Ex. 21; App. A].

Warner directors exercised no surveillance over the *performance* of the Warner-United contracts [R. 196, 269, 283, 292, 308].

Harry Warner's Control of Board Membership.

Three board members, namely, Friedman, Perkins and Wolf, admitted, in substance, that Harry Warner's influence was such that if they became *persona non grata* to Harry Warner, their resignations would be forthcoming [R. 490, 304-306, 291-292]. Two directors, namely, Guggenheimer and Catchings, admitted in substance, that their presence on the board was at Harry Warner's pleasure; that they were aware of the fact that Harry was influential enough to prevent their reelection if he chose to do so [R. 283-285, 264].

Director Carlisle admitted [R. 195] that "it is generally Mr. Harry Warner there that is asked if he wishes to make any changes" (in the composition of the board); that Harry Warner, in effect, "controls" the naming of those members of the board who are "inside the organization" and that the witness was mindful of these facts. Mr. Carlisle then admitted to being similarly mindful that "Mr. Harry Warner and his two brothers, in effect, control" whether or not he stays on in the company's employ [R. 195-196].

Director Bernhard resigned and severed his connection with Warner on September 25, 1945 [Ex. 17, App. B] three days before Warner and United signed their first contract.

Harry Warner Fathered the Warner-United Venture.

In the summer of 1945, Sperling, Harry Warner's son-in-law, was anticipating his discharge from military service [R. 122]. About that time, Harry Warner developed an idea, namely, "an individual motion picture production company which would be operated and controlled by Milton Sperling and Joseph Bernhard and which would produce motion pictures at the Warner's studios for Warner distribution" [R. 121-122].

Before Sperling entered the military he had worked for Twentieth Century-Fox, a motion picture company, as a salaried employee [R. 157]. He did not share Twentieth's profits.

Bernhard was a Warner director. He had no experience in motion picture production [R. 126]. He lived in New York. He was general manager of theatres owned by Warner subsidiaries and also handled their real estate matters [R. 333-334]. However, he had good connections with the New York Trust Company. John S. Bierworth, president of that bank, was his friend [R. 122, 343]. The Bernhard-Bierworth friendship had played a part in substantial loans which that bank had theretofore made to Warner [R. 123].

Early in August of 1945, Harry Warner told Bernhard, in substance, that he (Harry Warner) and his brother Jack would approve of a profit sharing venture in motion picture-production distribution between Warner and a company whose profits would be shared equally between Sperling and Bernhard, provided Bernhard could procure the New York Trust Company to loan such a Sperling-Bernhard owned company 50% of the production cost of a series of pictures [R. 124-125].

Bernhard talked to Bierworth [R. 126]; he subsequently told Harry Warner that he had Bierworth's commitment and that the loan would be forthcoming [R. 127]. He "suggested" to Harry Warner that when he (Bernhard) resigns and severs his connection with Warner and associates himself with Sperling. Warner pay him six months' salary, viz., $78,000.00 [R. 338-339].

The Formation of United.

On August 4, 1945, United was organized as a Delaware corporation [R. 28]. On September 6, 1945, Sperling and Bernhard acquired United's capital stock. Each paid $12,500.00 and each received 125 shares [R. 28]. This $25,000.00 was United's total capital [R. 340; 130].

Bernhard, Sperling and Oliver B. Schwab, Sperling's attorney, became United's officers and directors. Mr. Schwab is attorney of record for Appellees United and Sperling [R. 20].

On September 11, 1945, Warner loaned United $50,000.00 [R. 197-198]. No contract between Warner and United had as yet been even submitted for the approval of the Warner board.

WARNER

Bernhard Severs His Connection With United; Whereupon, Warner Makes Him a Gift of $78,000.00.

On September 25, 1945 (three days before Warner and United signed their first contract), a quorum of six directors, namely, Messrs. Albert Warner, Friedman, Perkins, Guggenheimer, Carlisle and Catchings, met in special session. Bernhard's resignation as a Warner officer and director was accepted. A resolution was adopted whereby Bernhard's employment contract with Warner was terminated "by mutual consent" and Bernhard was granted $78,000.00 "severance pay" [Ex. 17; App. B]. The em-

ployment contract so terminated contained *no* provision with respect to severance pay (App. C). Albert Warner spoke for the brothers Warner; he recommended adoption of the resolution [R. 188-190]. It was adopted unanimously.

Harry Warner Negotiates Terms of the Contract Between Warner and United.

Before the first contract between Warner and United was drawn, the substance thereof was agreed upon in oral conversations between Harry Warner, Jack Warner, Sperling and Bernhard [R. 120]. By August 19, 1945, Harry Warner and Bernhard "had agreed tentatively upon the highlights of the principal provisions of the contract" [R. 391, 393], and on instructions from Harry Warner, Mr. Herbert Freston, attorney for Warner, prepared the first draft. It was completed the following day, August 20, 1945 [R. 393].

Between August 19 and August 30, 1945, Mr. Freston conferred with Bernhard, Harry and Jack Warner, and Mr. Schwab, attorney for Sperling and United, with respect to the contract's provisions [R. 432-435]. On August 30, 1945, Mr. Freston took the last draft to the Warner Studios where he "had a conference with Harry and Jack Warner for about two hours." He "went over the agreement from beginning to end with both of them" [R. 432].

The Warner Board Approves the Contract.

The company's minutes record that three days after Bernhard's resignation, to wit, on September 28, 1945 [Ex. 18; App. D], a quorum met again and approved the contract. Albert Warner, speaking for the brothers Warner, recommended its approval [R. 307].

Warner Stockholders.

Warner is a publicly owned company. Its stock is listed and traded on the New York Stock Exchange [R. 119]. Stockholders, other than the three Warner brothers who own between fifteen per cent and 20 per cent of Warner's stock, number some 30,000 persons located all over the world [R. 120]. Stockholders' annual meetings are held in Wilmington, Delaware.

A proxy committee sponsored and financed by Warner, annually solicits stockholders' proxies. Each year, stockholders received, by mail, a notice of the annual meeting, a printed form of proxy and a "Proxy Statement" which disclosed, among other things, "Transactions between the Corporation and Directors" [Ex. 21; App. A].

Sperling's Connection With the Warner-United Venture Is Withheld From the Stockholders.

The annual meeting of stockholders, following the signing of the Warner-United contract on September 28, 1945, was held in Wilmington, Delaware, on February 19, 1946 [Ex. 21]. The proxy committee mailed stockholders a printed form of proxy and a "proxy statement" [R. 200-201; 30-31]. Under a caption "Transactions Between the Corporation and Directors," the statement revealed to stockholders, in substance, that Warner and United were engaged in a venture in motion picture production-distribution; that Bernhard, a former Warner director, was financially interested in United. The statement contained *no mention* of Sperling [Ex. 21; App. A].

Cross-examination of director Friedman disclosed that he authored this proxy statement; that three Warner directors collaborated in drafting it, namely, he, Perkins, and Carlisle [R. 482]. To the query, namely, whether the

three gentlemen opined that Sperling's *financial interest* in the venture and Sperling's *family relationship* to President Harry Warner "had better not be mentioned," Mr. Friedman replied that after giving the matter consideration, he, Perkins and Carlisle concluded "that it *need* not be mentioned" [R. 485].

Minutes of this stockholders' meeting [Ex. 37H] and minutes of subsequent stockholders' meetings, Exhibits 36a, b, c, d, e, f and g, contain no mention of Sperling. Nor, do such minutes contain any mention of the venture. This fact is stipulated [R. 31].

None of the Warner-United contracts in evidence was approved by the stockholders [R. 31].

Sperling Becomes United's Sole Stockholder.

Approximately a year after Bernhard paid $12,500.00 for one-half of United's stock, he transferred it to Sperling and received $400,000.00 in cash [R. 163]. The New York Trust Company also financed this transaction. It made Sperling a loan on his promissory note secured by collateral (shares in Warner) put up by Sperling's wife, Harry Warner's daughter [R. 163-164]. Bernhard resigned as a United director and officer. The Warner-United venture was then some nine months old. The transaction was closed in Mr. Friedman's office [R. 163].

Sperling became United's sole owner and stockholder. On December 26, 1946, Sperling's two infant children—Harry Warner's grandchildren—acquired an interest in United: Sperling transferred 62 shares of United stock to Title and Trust Company of Los Angeles in trust for them [R. 380]; and on March 3, 1947, Harry Warner acquired a *personal* financial interest in United: he en-

dorsed, personally, a $150,000.00 promissory note made by United to the New York Trust Company, payable on demand [R. 381-382].

The Venture's Terms Are Changed.

Approximately one year before the suit was filed, the first Warner-United contract (the contract which is the subject of the District Court's findings) was superseded by a contract which bears date December 6, 1947 [Ex. 4]. The new contract effected *material* and *substantial* changes in the venture's terms and in the respective rights and obligations of the venturers. Whereas, the terms of the first Warner-United contract had limited the scope of the venture to the making of *six* pictures over a three-year period, expiring in November, *1948*; had obligated United to furnish 50 per cent of the venture's capital requirements in producing each of these six pictures and Warner to furnish the remaining 50 per cent [Ex. 1, pp. 2 and 4, App. E], the superseding contract [Ex. 4], among other things (a) broadened the venture's scope by adding three more pictures; (b) extended the venture's life to and including the year *1950;* (c) in substance and effect, obligated Warner thenceforth to furnish the *whole,* to-wit; 100 per cent of the venture's capital requirements [Ex. 4; App. F].

Harry Warner and Sperling negotiated the terms of this superseding contract [R. 136]. At the time that it was negotiated and signed by the parties, Harry Warner was obligated to the New York Trust Company on United's $150,000.00 demand note which bore Harry Warner's endorsement [R. 381-382]. Ever since December 6, 1947, Warner has furnished 100 per cent of the venture's capital requirements.

The superseding contract was not approved by the Warner board prior to the commencement of this action although it had been acted upon for over a year before the suit was filed [R. 191-192]. The District Court made *no findings* with respect to this contract.

Further Warner-United Contracts Executed Subsequent to the Filing of the Suit and During Its Pendency.

Approximately six months before the expiration of the said superseding contract, Warner and United signed a new contract [Ex. 7]. It is dated July 21, 1950. This action had been pending for over one and a half years [R. 16]. The scope of the venture was again broadened by adding two "additional" *(sic)* pictures. The life of the venture was extended to January 1, *1953,* upon the same terms as those contained in Exhibit 4, *i. e.,* among them, Warner's obligation to furnish 100 per cent of the venture's capital requirements.

On August 12, 1952, some four months before the expiration of the contract, above referred to, Warner and United signed another contract [Schedule H, attached to Ex. 107, App. G], which again extended the venture's life, this time to January 1, *1956,* on the same terms as provided in the two previous superseding contracts, viz, Warner is obligated to furnish 100% of the venture capital. The scope of the venture was further broadened by adding two more "additional" *(sic)* pictures. It now embraces a total of *thirteen* pictures.

Eight of these pictures have been made [R. 353]. Warner contributed 50% of the capital to make the first three; the New York Trust Company furnished the remaining 50%, *i. e.,* the bank loaned United its 50% capital contribution. The loan was conditioned on War-

ner's agreeing, in writing [Exs. 1 and 8] to subordinate its (Warner's) right in each of these pictures and in the net income from its distribution to the bank's prior right to be repaid its loans in full, plus interest; and pending such repayment the pictures, *i. e.,* their negatives and copyrights and said net income be pledged to the bank as security.

The first two pictures were profitable; the third was an almost total loss [R. 354]; it cost $1,645,066.78 to make [Ex. 107, p. 21] and its net income from distribution was $419,019.63 [Ex. 107, pp. 32-33], all of which went to the New York Trust Company, pursuant to Warner's promise to subordinate its interest therein to the bank's superior right thereto (App. E).

Under the terms of the first Warner-United contract which prevailed when these *three* pictures were made, United was entitled to receive profits from the *two successful* pictures, *despite the loss suffered in the third picture* [Ex. 1, pp. 23-24, sub. j, App. E].

Profits received by United from the two successful pictures have thus far totalled $688,067.15 [Ex. 107, pp. 9, 16]; Warner paid United a substantial part of these profits during the years 1947, 1948, 1949 [Ex. 105A].

That losing picture was the last picture made by the venture under terms whereby United was obligated to contribute any capital to the venture [R. 353-354].

The last five pictures have been made under the *superseding* contracts aforedescribed. Warner has provided 100% of the capital required to make the last five pictures, over six and a half million dollars [Ex. 107, p. 48].

In addition to profits paid United, *Sperling* admits having received (up to April 2, 1953, the date of answers to requests for admissions), in excess of half a million dollars as salaries and expenses [R. 170] in his twin capacities of "producer" of pictures and "executive" of United.

This money was charged into the production cost of pictures made and was paid Sperling pursuant to the provisions of subparagraph 4½ of paragraph 7; Exhibit 1, pages 15-16 of the first Warner-United contract [App. E] and incorporated by reference in the superseding contracts. This paragraph provides, in substance that United "overhead," not limited in terms of dollars, is chargeable into the production cost of the pictures and that Sperling's "executive" salary, also not limited in terms of dollars, be considered a part of such overhead [R. 356-358].

Though all of the Warner-United contracts provide that the actual production of the pictures shall be within United's [in reality Sperling's R. 361] *exclusive* control, *none* of the Warner-United contracts contains a provision entitling Warner to examine United's books of account [Ex. 1, par. 4, pp. 8-9, App. E]. Nor do these contracts contain a provision obligating United to furnish Warner a breakdown, *i. e.,* a detailed itemization of United's "overhead" expenditures or of United's "direct" expenditures.

Warner admits that it has been ignorant of these details *throughout the performance* of these contracts; that United has not supplied them [Ex. 107, pp. 3-6, 12-15, 23-25, 33]. Profits received by United were calculated on the basis of United's statements of expenditures which do not disclose these details.

Specifications of Error.

I.

THE DISTRICT COURT ERRED IN CONCLUDING THAT THE SUIT IS NOT BETWEEN CITIZENS OF DIFFERENT STATES. THE JUDGMENT DISMISSING THE FIRST CAUSE OF ACTION IS CONTRARY TO LAW.

The record exhibits and establishes Appellant and Appellees are on opposite sides of a justiciable controversy in which the real matter in dispute is, whether the stockholders' corporation was used unlawfully to enrich the family of its chief executive officer; that the corporation and the officers and persons controlling it are hostile and opposed to the objects of the suit.

II.

THE DISTRICT COURT ERRED IN CONCLUDING THAT "NEITHER THE CORPORATION NOR ITS DIRECTORS OR OFFICERS WERE SHOWN TO BE AT THAT TIME OR AT ANY TIME UNDER THE DOMINATION AND CONTROL OF THE THREE WARNER BROTHERS."

Directors' admissions exhibit and establish the brothers Warner as controlling the Warner corporation and its directorate.

III.

THE DISTRICT COURT ERRED IN DISMISSING THE SECOND CAUSE OF ACTION ON THE GROUND THAT THE SAME IS "WITHOUT EQUITY."

It was error for the District Court to conclude, in substance, that because a decree which would accord "complete relief" in the controversy could not be made, it would be inconsistent with equity and good conscience to grant relief, though short of complete relief.

ARGUMENT.

I.

The Record Exhibits and Establishes Appellant and Appellees Citizens of Different States, on Opposite Sides of a Justiciable Controversy. The District Court Erred in Concluding That It Lacked Jurisdiction. 28 U. S. C. A. 1332.

Jurisdiction is "the right to put the wheels of justice into motion and to proceed to the final determination of a cause upon the pleadings and evidence," Mr. Justice Brown in *Illinois Central Railroad v. Adams* (1900), 180 U. S. 28, at 34. It exists in the District Courts of the United States if the plaintiff be a citizen of one state, the defendant a citizen of another, if the amount in controversy exceed $3,000.00, and the defendant be properly served with process within the district.

Ever since the Supreme Court's decision in the *Removal Cases,* 100 U. S. 457, 25 L. Ed. 593, federal courts have tested jurisdiction in derivative suits grounded on diversity of citizenship, in accordance with the rule laid down by Chief Justice Waite, namely, that the District Court will "ascertain the real matter in dispute and arrange the parties on one side or the other of that dispute" (*Pacific R. R. Co. v. Ketchum,* 101 U. S. 289, 290); the "pleadings may be put aside, and the parties placed on different sides of the matter in dispute, according to the facts" (*Removal Cases, supra,* at p. 469).

Whenever the inquiry into the District Court's jurisdiction disclosed the stockholder's corporation to be hostile; whenever the facts revealed that the officers who controlled the corporation were opposed *to the objects* of the suit, the corporation has been held to be properly

aligned with the defendant. In the absence of proof of such opposition, the corporation has been aligned with the complainant. (*Groel v. Electric Co.,* 132 Fed. 252, 263-264.)

The *Groel* case, *supra,* was decided some twenty-five years after the *Removal Cases.* In that case, the complaining stockholder, a citizen of New Jersey, had instituted a derivative suit in the New Jersey Court of Chancery. The defendants named were his corporation, a New Jersey company, and a Pennsylvania corporation. The case had been removed from the state court to the Federal District Court of New Jersey. Plaintiff stockholder moved to remand on the ground that both he and the defendant New Jersey corporation were citizens of New Jersey. In opposition to the motion, it was contended that since the stockholder was urging not his but the corporation's cause of action, the Federal Court should view the stockholder's corporation as a plaintiff and realign it with the complainant, thus bringing about diversity of citizenship.

The Court declined to do so. It said (p. 263):

> "This contention has seemed to necessitate the foregoing review of the authorities. The rule deduced from them is that, in a suit in equity instituted by a stockholder in his own name, but upon a right of action existing in his corporation, the stockholder's corporation will be aligned with the defendants whenever the officers or persons controlling the corporation are shown to be opposed to the object sought by the complaining stockholder, and that, when such opposition does not appear, the stockholder's corporation will be aligned with the complainant in the suit."
>
> (132 Fed. at 263, 264.)

Applying the rule, Judge Lanning held that since the New Jersey corporation was opposed to the objects of the suit; it was a defendant; had been properly aligned as a defendant and, consequently, the Court had *no* jurisdiction. The case was remanded to the state court.

The *Groel* case, *supra,* was cited with approval by the Supreme Court in *Venner v. Great Northern Rwy. Co.* (1908), 209 U. S. 24.

In the *Venner* case, *supra,* the complaining stockholder, a citizen of New York, had instituted a derivative suit in the New York Supreme Court. The defendants named were his corporation, a Minnesota corporation, and its president, a Minnesota citizen. The case had been removed to the United States Court for the Southern District of New York at the instance of the defendants. There, the defendants demurred to the bill on the ground that complaint had failed to comply with Equity Rule 94, whereupon, the complainant moved to remand upon the ground that the Court had no jurisdiction. Complainant urged, in substance, that the Court should view the corporation as a plaintiff and realign it as such because the corporation's interests were equatable with those of the stockholder; that accordingly stockholder and corporation should be regarded as opposed to the co-defendant. The Court rejected this contention and held that the District Court had jurisdiction.

Mr. Justice Moody, writing for a unanimous court, said at pages 31-32:

> "First, was there a controversy between citizens of different states? As the parties were arranged by the plaintiff himself on the face of the record there was diversity of citizenship. The plaintiff was a citizen of New York and the two defendants were

citizens of Minnesota. But the plaintiff insists that by looking through the superficial aspects of the controversy to its real substance it is seen that the railway company's interest is adverse to that of the other defendant, and the same as that of the plaintiff, and that therefore for the purpose of determining jurisdiction, the defendant railway should be regarded as plaintiff. If this should be done there would be a citizen of Minnesota a plaintiff and another citizen of Minnesota a defendant and the diversity of citizenship which is indispensable to the jurisdiction of the Circuit Court would no longer exist. * * * Let it be assumed for the purposes of this decision that the Court may disregard the arrangement of parties made by the pleader, and align them upon the side where their interest in and attitude to the controversy really places them, and then may determine the jurisdictional question in view of this alignment. Removal Cases, 100 U. S. 457 * * * If this rule should be applied it would leave the parties where the pleader has arranged them. It would doubtless be for the financial interests of the defendant railroad that the plaintiff should prevail. But that is not enough. *Both defendants unite,* as sufficiently appears by the petition and other proceedings, in *resisting* the plaintiff's claim of illegality and fraud. They are alleged to have engaged in the same illegal and fraudulent conduct, and the injury is alleged to have been accomplished by their joint action. *The plaintiff's controversy is with both* and both are rightfully and necessarily made defendants, and neither can, for jurisdictional purposes, be regarded otherwise than as a defendant * * * The case of Doctor v. Harrington, is precisely in point on this branch of the case, and is conclusive. * * *."
(Emphasis added.)

Counsel urge that the rationale in the *Groel* and *Venner* cases, *supra,* is identical. In both cases, the emphasis is on the fact that the corporation was a *resistant* —that it was antagonistic and opposed to the objects sought in the suit. Whereas the complainant stockholder sought a decree adjudging his corporation's conduct to have been unlawful, the corporation sought an adjudication to the contrary. Hence, it was properly aligned with the other resistants.

The opinion of this Court in *Cutting v. Woodward,* 255 Fed. 633, made this crystal clear when it said, that the *attitude* of the stockholder's corporation in that case —its avowed hostility, as made manifest by its denial of the stockholder's charge of wrongdoing, its prayer that relief be denied, its joining forces with the individual defendant charged with tortious behavior, demonstrates that the corporation is an adverse party.

> "The trust company raises the question of jurisdiction, asserting that the company is not an adversary party to the plaintiffs in the suit, but is the real party in interest as plaintiff, and that consequently there is no diversity of citizenship. But this is not a case in which the trust company, although made a defendant, should be realigned as a plaintiff, as in *Hamer v. New York Railways,* 244 U. S. 266, 274 * * *. Here the attitude of the trust company is hostile to the plaintiffs. It appeared in a joint answer with the appellant and by the same counsel and it denied the allegations of the bill and prayed for the dismissal thereof. The cause is therefore one in which plaintiffs, citizens of Illinois, bring suit against defendants who are citizens of Cali-

fornia. Doctor v. Harrington, 196 U. S. 579, * * *; Venner v. Great Northern Railway, 209 U. S. 24 * * *."

To the same effect, see the opinion of Mr. Justice Gray in *New Jersey Central Railroad v. Mills,* 113 U. S. 249, at 256-257.

Appellant urges that the law as expounded in these cases, applied to the evidence in this preliminary inquiry into the Court's jurisdiction justifies a reversal of the judgment. Evidence consisting of *undisputed facts* exhibits that the requisite essentials as prescribed by the Act of Congress conferring jurisdiction upon the Court below are present. These essentials are:

(A) A controversy between citizens of different states.

(B) The *real matter in dispute* is whether Warner was used unlawfully to enrich the family of its chief executive at Warner's expense, risk and to its detriment.

(C) Complainant stockholder and the defendants named are on opposite sides of that dispute.

(D) The controversy is justiciable.

(E) The officers and persons controlling Warner are hostile and opposed to the objects of the suit.

A, B, C. Evidence Consisting of Undisputed Facts Exhibits Complainant Stockholder and the Defendants on Opposite Sides of a Controversy in Which the Real Matter in Dispute Is Whether Warner Has Been Used Unlawfully to Unjustly Enrich the Family of Its Chief Executive.

The record exhibits beyond peradventure that this was the bone of contention—the real matter in controversy; the stockholder contending that the Warner-United dealings which are embraced and identified in the proof were unlawful and permeated with self-dealing and overreaching to bring about Sperling's unjust enrichment at Warner's expense and risk; the corporation contending, in opposition, (1) that these dealings were lawful, fair to Warner and of benefit to it; (2) that if the dealings were unfair, Warner's right to relief in the premises has been barred by the statutes of limitations of three states.

D. The Controversy Is a Justiciable One.

It is well settled that in a controversy between a stockholder, and his corporation, its president and others in which the legality and fairness to the corporation of transactions growing out of contracts between the corporation and its president or members of his immediate family are challenged; in which it appears that terms of such contracts had been negotiated by the president, a court of equity will not invoke the "business judgment rule" but will lay it aside and will scrutinize such transactions with a view to determining their legality and their fairness to the corporation and grant appropriate relief.

Underlying equity's intervention in such situations is the recognition that inherent in the birth and during the life of such transactions is an unavoidable conflict between an individual's natural desire to secure advantage

to self, or to those closely related to him, and that individual's obligation, as a corporate trustee, to see to it that his corporation secures the best possible terms in the trading. The evolution of the law with relation to this phase of human relations exhibits chancery's age-old struggle to preserve against "erosion" a natural resource in a healthy, competitive society, namely, the concept of undivided loyalty due the beneficiary at the hands of the chosen trustee.

Pepper v. Litton, 308 U. S. 295, 306;

Remillard v. Remillard-Dandini, 109 Cal. App. 2d 405, 419, 420;

Meinhardt v. Salmon (1928), 249 N. Y. 458, 164 N. E. 545; 62 A. L. R. 1;

Globe Woolen Co. v. Utica Gas & El. Co., 224 N. Y. 483;

Bayer v. Beran (1944), 49 N. Y. S. 2d 2, 9;

Guth v. Loft, Inc. (1939), 23 Del. Ch. 255, 5 A. 2d 503;

Voorhees v. Nickson (1907), 72 N. J. Eq. 791, 66 Atl. 192, 193;

Stone. The Public Influence of the Bar, 48 Harv. L. Rev. 1, 8.

E. The Officers and Directors Controlling Warner Are Hostile and Opposed to the Objects of the Suit.

The record exhibits that the corporation and those who administered its affairs were not only at odds with the stockholder over "the desirability" of bringing the suit (Opinion 117 Fed. Supp., at p. 802) or over "the advisability" of bringing the suit (*id.* at p. 803), but that they are active resistants to complainant's claim, to

wit: that the *group** of Warner-United contracts in evidence as Exhibits 1, 3, 4, 7 and Schedule H, attached to Exhibit 107, is unlawful; they are unfair and were unfairly performed; that the $78,000.00 paid to Bernhard when he resigned as a Warner director to join Sperling in the Warner-United deal was an unlawful *gift* of corporate funds. Their position in the suit is, in short, that complainant's claim is without merit; that these are sound business transactions; that these Warner-United dealings have not injured the company as claimed by the stockholder; on the contrary, the company has been benefited by them; and if they are unlawful, the court is powerless to grant any relief because of the statutes of limitations.

Appellant urges that the effect of the District Court's holdings is to add to the foregoing jurisdictional essentials, a *further prerequisite,* namely, management's resistance to the object of the suit must be shown to be generated by *sinister motives.*

Counsel respectively submit that after painstaking research into the law relating to alignment of parties for jurisdictional purposes, no case has been found which has suggested that a stockholder in a derivative suit who has aligned his corporation as a defendant has the burden of proving by the preponderance of the evidence, and *in limine,* that the resistance to the objects of the

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*The District Court's findings [R. 74-75] refer to but the first of the group, namely Exhibit 1.

suit by those controlling the corporation, through avowed and admitted, proceeds from sinister motives.

In *Delaware & Hudson Co. v. Albany and Susquehanna,* 213 U. S. 425 at 451, Justice McKenna, writing for a unanimous court, says:

> "The attitude of the directors need not be sinister. *It may be sincere.* It was so in Chicago v. Mills, 204 U. S. 321, and *ex parte* Young, 209 U. S. 123, and other cases. In this case it was certainly determined. It continued until after this suit was brought. Both the Delaware Company and the Susquehanna Company, then under the 'administration of the Delaware Company,' to quote from the Circuit Court of Appeals, demurred to the bill." (Emphasis added.)

In *Ashwander v. Tennessee Valley Authority,* 297 U. S. 288, at 319, Chief Justice Hughes says:

> "In such a case it is not necessary for stockholders—when their corporation refuses to take suitable measures for its protection—to show that the managing board or trustees have acted with fraudulent intent or under legal duress. To entitle the complainants to equitable relief, in the absence of an adequate legal remedy, it is enough for them to show a breach of trust or duty involved in the injurious and illegal action. Nor is it necessary to show that the transaction was *ultra vires* of the corporation. * * * The fact that the directors in the exercise of their judgment, either because they were disinclined to take a burdensome litigation *or for other reasons* which they regarded as substantial resolved to comply with legislative or administrative demands, has not been deemed an adequate ground

> for denying to the stockholders *an opportunity to contest* the validity of the governmental requirements to which the directors were submitting." (Emphasis added.)

In *Schmidt v. Esquire, Inc.,* decided in 1954, the Court of Appeals, 7th Circuit, after considering the pronouncements of the Supreme Court in the *Ashwander* case, *supra,* the *Delaware v. Susquehanna* case, *supra,* among others, and the reasoning of the Court in the *Groel* case, *supra,* said:

> "It does not seem that a different rule of alignment applies when, as in this case, there is no indication that the refusal by the corporate management to sue results from fraudulent or other improper motives."

The thrust of these decisions is aimed at securing the alignment of the corporation in accordance with the realities of the situation: the corporation remains aligned as a defendant when, in reality, it is a resistant; whenever those who administer its affairs array it as such; when they manifest by word, act and deed that they are opposed to the objects of the suit. This is the essence of the holdings of the Supreme Court and of this Court.

II.

Directors' Admissions Exhibit and Establish the Brothers Warner as Controlling the Warner Corporation and Its Directorate, as a Matter of Law. In View of These Admissions, the District Court Erred in Concluding That "Neither the Corporation nor Its Directors or Officers Were Shown to Be at That Time or at Any Time Under the Domination and Control of the Three Warner Brothers."

Assuming but not conceding, that control of the stockholder's corporation by the codefendants who are charged with a breach of trust is a factor in determining whether the Court has jurisdiction, appellant urges that directors' admissions exhibit the Warner corporation and its directorate as being controlled by the brothers Warner.

Counsel urge that a board of publicly owned and listed company composed of ten members, three of which reluctantly admit, in substance, that their continued connection with the company depends on their not becoming *persona non grata* to the company's president who, together with his two brothers, have a working control of the company; another two of which likewise admit, in substance, that their presence on the board is at the president's pleasure; that they are aware that the president and his brothers can readily prevent their election as directors if they chose to do so; and the seventh of the ten admits that the president, in effect, "controls" the naming of the "inside" directors; that the president and his two brothers control whether or not he stays in the company's employ, is in reality and to all intents and

purposes, a board controlled by its president and his brothers.

Director Carlisle admitted in substance, that Harry is the man who controls the composition of the board. He admitted *in so many words,* that his continued presence in the Warner organization was at the pleasure of the Warner family [R. 195-196]. Mr. Friedman phrased it differently when he said he would resign if he became *persona non grata* to any of the Warners [R. 490]. Mr. Perkins put it, that he would not remain in the company's employ if the Warner family indicated opposition [R. 304-306]. This was similarly the substance of Mr. Wolf's testimony [R. 291-292]. And the substance of directors Guggenheimer [R. 283-285] and Catchings testimony [R. 264] is that their continued presence on the board was virtually at Harry Warner's pleasure.

Appellant contends that such a board is confessedly, in last analysis a sterilized board; for these factors impair the roots and tend, inexorably, to destroy the stuff that directorial freedom and independence are made of, viz.; the consciousness of being untrammeled and uninhibited in functioning as trustees for all the stockholders.

None of the gentlemen above referred to, faced the Court except Mr. Friedman. Their depositions were read. Appellant urges that reflected in what the deponents said is the compelling fact namely, here was an influence, dominating, potent and persuasive exerted by Harry Warner from beginning to end. And while it is true, that neither Harry Warner nor his brother Jack was present at the board meetings at which the 1st Warner-United contract and the $78,000.00 gift to Bernhard were ap-

proved, and did not vote thereon, the New York Court of Appeals, in a not unsimilar situation, observed "A dominating influence may be exercised in other ways than by a vote." Cardozo, J., in *Globe Woolen v. Utica Gas & El. Co., supra.*

For the reasons urged herein in numbers I and II, it is respectfully submitted that the learned Court erred in concluding that it had no jurisdiction of the first cause of action.

III.

The District Court Erred in Dismissing the Second Cause of Action on the Ground That It Is "Without Equity."

The District Court's realignment of the defendant Warner did not destroy its *jurisdiction* over the second cause of action.

Whether Warner be aligned as a plaintiff or as a defendant therein, the stockholders' plea in this second cause is, that his corporation was used unlawfully to accomplish the unjust enrichment of Harry Warner's son-in-law; that this was done through a series of tranactions had between Warner and United States Pictures Co., Inc., a company virtually owned by the son-in-law; that as a result of these transactions, Warner corporation has been injured; and the relief obviously sought in this second cause is no more than, that trustees Harry and Jack Warner be adjudicated to have been guilty of a breach of trust and be ordered to respond in damages for their misconduct.

It is thus seen that the second cause of action seeks nothing from *United*,

The District Court's conclusion to dismiss this cause is predicated on two identifiable grounds: (1) that were the court to proceed to final decision therein without the presence of United, the controversy would be left "in such a condition that its final determination would be wholly inconsistent with equity and good conscience;" and (2) that the court would thereby be doing violence to "that equity which seeks to put an end to litigation by doing complete and final justice."

Reflected in both of these grounds is the learned court's reasoning, that if the two defendants, the brothers Warner, were guilty of a breach of trust, then United, which benefited thereby, "ought to be" before the court so that it may be compelled to restore its ill-gotten gains and so that both the Warner corporation and United may be directed to, so to speak, sever their unholy alliance.

At page 810 of its opinion, the learned Court said:

> "While not an *indispensable party* in the sense of 'having a joint interest' and for that reason subject to 'necessary joinder' by the terms of Rule 19(a), United is clearly a person who 'ought to be' a party within the meaning of Rule 19(b)." (Emphasis added.)

Appellant urges, however, that the fact that United *ought to be* a party in order that Warner corporation obtain the *ultimate* in relief, viz., not merely the money that it has lost as the result of this breach of trust, but the money that it may continue to lose as the result of obligations which Warner has assumed in contracts entered into with United, should not operate to deprive Warner of such relief as the Court is empowered to grant.

In *Paine v. Hook,* 74 U. S. 425, at 431, the Supreme Court said:

> "But it is said the proper parties for a decree are not before the court, as the bill shows there are other distributees besides the complainant. It is undoubtedly true that all persons materially interested in the subject-matter of the suit should be made parties to it; but this rule, like all general rules, being founded in convenience, will yield, whenever it is necessary that it should yield, in order to accomplish the ends of justice. *It will yield,* if the court is able to proceed to a decree, *and do justice to the parties before it, without injury to absent persons, equally interested in the litigation, but who cannot conveniently be made parties to the suit.*
>
> "The necessity for the relaxation of the rule is more specially apparent in the courts of the United States, where, oftentimes, the enforcement of the rule would *oust them of their jurisdiction,* and deprive parties entitled to the interposition of a court of equity of any remedy *whatever.*" (Emphasis added.)

Appellant urges that the Supreme Court's decision in the *Paine case, supra,* is peculiarly applicable to the situation before the Court in this case, for the judgment creates the unique situation, namely, that not only United, which is *not* before the Court, but defendants Harry and Jack Warner, who *are* before the Court, become virtually immune against being made answerable for their delicts. A situation is created in which, were the stockholder to apply for relief to the California state court (where he can obtain jurisdiction of the persons of all the parties), that court would be rendered powerless. The statute of limitations would, in all probability, afford

the defendants formidable sanctuary as to a very substantial part of their misconduct.

Counsel urge that the true rule as to indispensability of parties calls for a reconciliation between the desirability on the one hand of obtaining a complete and final decree between all parties who may have an interest in the controversy, and on the other hand, of having some adjudication, if at all possible, rather than none, thereby leaving the parties remediless because of an ideal desire to have all interested persons before the Court. Moore's Federal Practice, Vol. 3, 2154-5 (2nd Ed. 1948).

In *Young v. Powell,* 179 F. 2d 147 (5th Cir., 1950), at page 151, the Court views the problem as follows:

> "* * *. 'The fundamental principles are simple. They are: (1) where federal jurisdiction rests on diversity of citizenship the diversity must be complete, and to see whether it is, all parties will be aligned as plaintiffs or defendants according to their real interests; (2) a court cannot adjudicate the rights of persons who are not parties before it; they will be brought in if possible and if they will not destroy diversity. (3) if diversity will be thereby destroyed the court will not require them to be brought in, but will inquire if there is any relief it can properly give without them; if there is, it will give it without prejudice to the rights of the absent; if none can be given the suit will be dismissed. In the latter event the dismissal is not for want of federal jurisdiction, but for lack of indispensable parties. (See Federal Rules of Civil Procedure, No. 19, 28 U. S. C. A.)"

In *Wesson v. Crain,* 165 F. 2d 6, at page 9, the Court stated:

> "* * *. In *Bourdieu v. Pacific Western Oil Co.,* 299 U. S. 65, 70, 71, 57 S. Ct. 51, 53, (81 L. Ed. 42), Mr. Justice Sutherland, speaking for the court, said. 'The rule is that if the merits of the cause may be determined *without prejudice to the rights of necessary parties, absent* and beyond the jurisdiction of the court, it will be done; and a court of equity will strain hard to reach that result. *West v. Randall,* Fed. Cas. No. 17,424, 2 Mason 181, 196 (opinion by Mr. Justice Story); *Cole Silver Mining Co. v. Virginia* and *G. H. W. Co.,* Fed. Cas. No. 2,990, 1 Sawy. 685, 689 (opinion by Mr. Justice Field); Story's Equity Pleading (8th Ed.), Secs. 77, 96. And see *Russell v. Clark's Executors,* 7 Cranch 69, 98 (3 L. Ed. 271); *Elmendorf v. Taylor,* 10 Wheat. 152, 167, 168 (6 L. Ed. 289). *Cf.* Equity Rule 39 (28 U. S. C. A., Sec. 723 (Appendix).)" (Emphasis added.)

For the foregoing reasons, Appellant contends that the learned District Court erred in dismissing the second cause of action on the ground that it is "without equity."

Respectfully submitted,

Moss, Lyon & Dunn and
Herman H. Levy,
By Herman H. Levy,
Attorneys for Appellant.

Appendix A.

WARNER BROS. PICTURES, INC.

Notice of Annual Meeting of Stockholders.

New York, N. Y., January 10, 1946.

To the Stockholders of Warner Bros. Pictures, Inc.

Notice Is Hereby Given that the Annual Meeting of Stockholders of Warner Bros. Pictures, Inc. will be held at the principal office of the Corporation at 100 West 10th Street, Wilmington, Delaware, on Tuesday, February 19, 1946, at 11 o'clock in the forenoon, for the purposes, as set forth in the attached proxy statement, of electing six directors of the Corporation and of transacting such other business as may properly come before the meeting.

If you do not expect to be present in person at the meeting, the Board of Directors requests that you date, fill in, sign and mail the enclosed proxy.

Stockholders of record at the close of business January 11, 1946 will be entitled to vote at such annual meeting.

R. W. PERKINS,
Secretary.

PROXY STATEMENT.

The Annual Meeting of the Stockholders of Warner Bros. Pictures, Inc. will be held at the principal office of the Corporation at 100 West 10th Street, Wilmington, Delaware, on Tuesday, February 19, 1946, at 11 o'clock in the forenoon. At the time of this statement the only business which the management intends to present, or is informed that others will present, at the annual meeting,

is the election of six directors to serve for a term of two years.

The proxy is revocable and the solicitation thereof is on behalf of the management of the Corporation. Proxy solicitation will be made by mail, telephone (at a nominal cost) and personal solicitation by officers and employees of the Corporation and by Mr. John E. Morrison, Sr., of 15 Broad Street, New York City, who has been engaged for this purpose. The Corporation will pay Mr. Morrison $1,200, plus his reasonable disbursements. The expenses for preparing, handling and mailing the proxy statement and the proxy and the charges of brokerage houses and other custodians will also be paid by the Corporation.

There are outstanding, after deducting shares held in the treasury, 3,701,090 shares of common stock of the Corporation.

The Annual Report of the Corporation for the fiscal year ending August 31, 1945, which is not part of this proxy statement, is enclosed.

The designation of the proxy committee was made by the Board of Directors of the Corporation, and it is the intention of the proxy committee, unless specifically instructed to the contrary, to vote proxies received in favor of the election of the nominees named below and to vote proxies received, in their discretion, upon such matters not now known or determined which may properly come before the meeting.

The Board of Directors has nominated for re-election to the Board of Directors, to serve for a term of two years, John E. Bierwirth, Waddill Catchings, Robert W. Perkins, Albert Warner, Harry M. Warner and Jack L. Warner.

formation Concerning Directors.

Name	Principal Occupation	First Became Director	Securities Beneficially Owned at December 1, 1945*
Nominees			
n E. Bierwirth	President and Trustee of The New York Trust Company	1945	None
ddill Catchings	Producer of radio programs	1925	None
bert W. Perkins	Vice President, Secretary and General Counsel	1936	500 shares Common Stock
bert Warner	Vice President and Treasurer	1923	210,000 shares Common Stock
rry M. Warner	President	1923	150,000 shares Common Stock
k L. Warner	Vice President	1923	208,800 shares Common Stock
Other Directors			
muel Carlisle	Controller and Assistant Treasurer	1934	None
nleigh P. Friedman	Vice President	1931	600 shares Common Stock
arles S. Guggenheimer	Member of the firm of Guggenheimer & Untermyer, Attorneys	1932	None
muel Schneider	Vice President	1944	None
rris Wolf	Member of the firm of Wolf, Block, Schorr & Solis-Cohen, Attorneys	1928	1,617 shares Common Stock

*Based on information furnished by the respective directors.

All of the nominees, except John E. Bierwirth, have previously been elected Directors of the Corporation by stockholders. For several years prior to 1941, Mr. Bierwirth was a Vice President of The New York Trust Company, and since 1941 has been its President. Mr. Bierwirth was elected a Director of Warner Bros. Pictures, Inc. at a meeting of the Board of Directors on November 23, 1945.

Remuneration of Directors and Officers.

The aggregate remuneration, including fixed amounts paid as allowance for expenses (other than travelling expenses), paid by the Corporation and its subsidiaries, directly or indirectly, during the fiscal year ending August 31, 1945, to directors and to persons nominated for election as directors, and to officers of the Corporation

(as defined in Regulation X-14) receiving payments of remuneration totalling more than $20,000 during such year, and the excess of such remuneration over that paid during the preceding fiscal year in cases where the remuneration is more than $20,000, are given below. The fiscal year ending August 31, 1945 included 52 weekly pay days as compared with 53 weekly pay days during the preceding fiscal year.

	Aggregate Remuneration	Excess
Joseph Bernhard*	$157,100	$ —
John E. Bierwirth	None	—
Samuel Carlisle	48,200	3,450
Waddill Catchings	1,100	—
Stanleigh P. Friedman	66,000	—
Charles S. Guggenheimer	1,100	—
Robert W. Perkins	66,000	—
Samuel Schneider	78,900	—
Herman Starr	71,200	4,950
Albert Warner	104,900	—
Harry M. Warner	182,500	—
Jack L. Warner	182,100	—
Morris Wolf	900	—

The firm of Friedman & Bareford, of which Stanleigh P. Friedman is a member, was paid the sum of $3,900 for legal services.

The firm of Guggenheimer & Untermyer, of which Charles S. Guggenheimer is a member, was paid the sum of $10,000 for legal services.

The firm of Wolf, Block, Schorr & Solis-Cohen (Philadelphia), of which Morris Wolf is a member, was paid the sum of $21,000 for legal services.

The aggregate remuneration, including fixed amounts paid as allowance for expenses (other than travelling expenses), paid by the Corporation and its subsidiaries during the last fiscal year to the directors and officers of Warner Bros. Pictures, Inc., considered as a group, amounted to $960,000, excluding $34,900 paid to the aforementioned legal firms.

*Joseph Bernhard resigned as officer and director on September 10, 1945.

Transactions Between the Corporation and Directors.

On September 28, 1945 this Corporation entered into an agreement with United States Pictures, Inc., of which Joseph Bernhard is President and owner of 50% of the stock, for the production of six feature motion pictures for distribution by this Corporation. Warner Bros. Pictures, Inc. does not own any of the capital stock of United States Pictures, Inc. The agreement provides generally as follows. The motion pictures are to be produced at the studios of this Corporation and this Corporation agrees to advance 50% of the cost of production of each motion picture by either cash, charges for talent and facilities furnished for the production of the motion pictures, or proportional charges for overhead of studios, etc. Subsidiaries of this Corporation will distribute the pictures throughout the world and retain from the gross proceeds certain direct expenses and certain percentages of the gross receipts of distribution which vary for different countries. United States Pictures, Inc. is required to provide the other 50% of the cost of production of each of the motion pictures, and may borrow this and pledge as security therefor the negatives, positive prints and all of the net proceeds of distribution after the deductions above referred to.

On November 2, 1945 a loan agreement was entered into between The New York Trust Company, as lender, United States Pictures, Inc., as borrower, and this Corporation, for such part of the cost of production as may

be borrowed by United States Pictures, Inc., which agreement provides for the pledge of the security referred to in the preceding paragraph. After such loans shall have been repaid and Warner Bros. Pictures, Inc. has been reimbursed for the amounts advanced by it, and then United States Pictures, Inc. has been reimbursed for the balance of the amounts advanced by it, then Warner Bros. Pictures, Inc. and United States Pictures, Inc. shall share equally in the remaining net proceeds of distribution.

Appendix B.

Waiver of Notice

We, the undersigned, being members of the Board of Directors of Warner Bros. Pictures, Inc. do hereby waive all notice whatsoever, of the Special meeting of the Board of Directors of said Corporation, and do consent that the 25th day of September 1945, at 10:00 o'clock in the forenoon, be and hereby is fixed as the time, and 321 West 44th Street, New York, N. Y. as the place for holding the same, and that all such business may be transacted thereat as may lawfully come before said meeting.

(sgd) H. M. Warner
(sgd) J. L. Warner
(sgd) Albert Warner
(sgd) S. Carlisle
(sgd) Stanleigh P. Friedman
(sgd) R. W. Perkins
(sgd) S. Schneider
(sgd) Waddill Catchings
(sgd) Chas. S. Guggenheimer
(sgd) Morris Wolf

MINUTES OF A SPECIAL MEETING
of the
BOARD OF DIRECTORS
of
WARNER BROS. PICTURES, INC.

A special meeting of the Board of Directors of Warner Bros. Pictures, Inc. was held at the office of the Corporation, 321 West 44th Street, New York, N. Y., on the 25th day of September, 1945, at 10:00 o'clock in the forenoon.

There were present: Messrs. A. WARNER
S. CARLISLE
S. P. FRIEDMAN
R. W. PERKINS
WADDILL CATCHINGS
C. S. GUGGENHEIMER

constituting a quorum, and Messrs W. S. McDonald, L. J. Goffman, and E. K. Hessberg.

Mr. Albert Warner presided as Chairman, and Mr. E. K. Hessberg, Assistant Secretary, acted as Secretary of the Meeting.

* * * * * * * * *

The Chairman announced that Mr. Joseph Bernhard has resigned as Vice-President and Director of the Corporation.

Upon motion duly made, seconded and carried, it was unanimously

"RESOLVED: That the officers of the Corporation be authorized to terminate the employment agree-

ment of Joseph Bernhard with the mutual consent of Mr. Bernhard and the Corporation, such termination to be effective on November 7, 1945, and that Mr. Bernhard be paid the sum of Seventy-Eight Thousand ($78,000) Dollars as severance pay, such sum to be payable in twelve (12) monthly instalments commencing on December 1, 1945."

The Chairman reported that Mr. Einfeld who had recently severed relationship with the Company had received severance pay of six (6) months' salary.

There being no further business to come before the meeting, it was, on motion, duly adjourned.

(SGD) E. K. HESSBERG
Assistant Secretary

September 10, 1945

To the Board of Directors of
Warner Bros. Pictures, Inc.

I hereby resign as Vice President and Director of Warner Bros. Pictures, Inc., effective immediately.

Very truly yours,
(SGD) JOS. BERNHARD
Joseph Bernhard

Appendix C.

Plaintiff's Exhibit 1—2 sheets.

Agreement made and entered into this 24th day of October 1941, by and between Warner Bros. Pictures, Inc., a Delaware corporation, having its principal business office in the City of New York State of New York, hereinafter for convenience called "First Party," party of the first part and Joseph Bernhard, of the City of New York, hereinafter for convenience called "Second Party," party of the second part,

Witnessesth:

Whereas, First Party is desirous of continuing the sole and exclusive services of the Second Party, now in the employ of the First Party, upon the terms and conditions hereinafter stated,

Now, Therefore, for and in consideration of the sum of One Dollar ($1.00) in hand paid by First Party to Second Party, receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements hereinafter set forth, to be performed and kept by the respective parties hereto, it is agreed as follows:

1. First Party hereby employs Second Party and Second Party hereby engages his sole and exclusive services to First Party as a Managing Executive with headquarters in New York.

2. The term of this contract will be five (5) years commencing November 1, 1941 and ending October 31, 1946, and the compensation to be paid by First Party to Second Party for Second Party's services hereunder shall be as follows: Twenty Five Hundred Dollars ($2,500) per week, plus Five Hundred Dollars ($500.00) per week as expenses for entertainment. This shall not cover expenses while travelling.

In the event that the Second Party shall be physically or mentally incapacitated from performing his duties hereunder, and such incapacity shall continue for a period of sixteen weeks (16) weeks or longer, First Party shall have the right, at its option, to terminate employment of Second Party under this agreement.

This contract, on its effective date, shall supersede the existing contract between the parties dated March 13, 1939.

In Witness Whereof, First Party has caused these presents to be signed by its duly authorized officer and its corporate seal to be hereunto fixed and Second Party has hereunto set his hand and seal all on the day and year first above written.

WARNER BROS. PICTURES, INC.
By (signed) H. M. WARNER
President
(signed) JOSEPH BERNHARD

Attest:
R. W. PERKINS, Secretary

The parties to the above agreement dated the 24th day of October, 1941, hereby agree that said agreement shall be terminated on November 7, 1945, and thenceforth be of no further force and effect.

Signed in the City of New York this 1st day of October, 1945.

WARNER BROS. PICTURES, INC.
By: (signed) STANLEIGH P. FRIEDMAN
Vice President
(signed) Jos. BERNHARD

Attest:
(signed) R. W. PERKINS
Secretary

Appendix D.

Waiver of Notice

We, the undersigned, being members of the Board of Directors of Warner Bros. Pictures, Inc. do hereby waive all notice whatsoever, of the Special meeting of the Board of Directors of said Corporation, and do consent that the 28th day of Sept. 1945, at 10:00 o'clock in the forenoon, be and hereby is fixed as the time, and 321 West 44th Street, New York, N. Y. as the place for holding the same, and that all such business may be transacted thereat as may lawfully come before said meeting.

(sgd) H. M. Warner
(sgd) J. L. Warner
(sgd) Albert Warner
(sgd) S. Carlisle
(sgd) Stanleigh P. Friedman
(sgd) R. W. Perkins
(sgd) S. Schneider
(sgd) Waddill Catchings
(sgd) Chas. S. Guggenheimer
(sgd) Morris Wolf

Minutes of a Special Meeting
of the
Board of Directors
of
Warner Bros. Pictures, Inc.

A special meeting of the Board of Directors of Warner Bros. Pictures, Inc. was held at the office of the Corporation, 321 West 44th Street, New York, N. Y., on the 28th day of September, 1945 at 10:00 o'clock in the forenoon.

There were present: Messrs. A. Warner
S. Carlisle
S. P. Friedman
R. W. Perkins
Waddill Catchings
C. S. Guggenheimer
Morris Wolf

constituting a quorum, and Messrs. W. S. McDonald, L. J. Goffman and E. K. Hessberg.

Mr. A. Warner presided as Chairman, and Mr. E. K. Hessberg, Assistant Secretary, acted as Secretary of the Meeting.

* * * * * * * * *

The Chairman presented an agreement dated September 28, 1945 with United States Pictures, Inc. formed by Joseph Bernhard and Milton Sperling. The agreement provided for the distribution by Warner Bros. Pictures Distribution Corporation of films to be produced by United States Pictures, Inc. at this Company's studio in Burbank Cal.

On motion duly made and seconded, it was unanimously

"Resolved: That any Vice President of this Corporation be and he hereby is authorized and empowered to execute on behalf of this Corporation, the agreement dated September 28, 1945 with United States Pictures, Inc."

* * * * * * * * *

There being no further business to come before the meeting, it was, on motion duly adjourned.

(sgd) E. K. Hessberg
Assistant Secretary

Appendix E.

Extracts from Exhibit 1, Contract Between Warner and United, Dated September 28, 1945.

at pages 1 and 2:

THIS AGREEMENT, made this 28th day of September, 1945, by and between Warner Bros. Pictures, Inc., a Delaware corporation duly qualified to do and doing business in the State of California, hereinafer called the "Company," and United States Pictures, Inc., also a Delaware corporation duly qualified to do business in the State of California, hereinafter referred to as the "Producer," Witnesseth:

at page 3.

FIRST: Producer agrees to produce six (6) motion picture photoplays during the three-year period immediately succeeding the date hereof, with the understanding that the Producer will use its best efforts in view of various production exigencies, and other factors affecting such activities, to produce two (2) or more motion pictures during each of said three (3) years. * * *.

at pages 4-5.

SECOND. * * *

The Company shall contribute to the financing of the pictures in the manner hereinafter provided in this paragraph Second. It is understood that the Company will lend to the Producer, under the remaining provisions of this paragraph Second, fifty per cent (50%) of the total cost of production of the first picture, and the Producer will provide the remaining fifty per cent. As to each of the following five pictures, Producer agrees that it will provide such additional portion, if any, of the financing (over fifty

per cent) as its net corporate surplus will from time to time permit, and the Company agrees to advance to the Producer the balance of the cost of each such picture. The Company expressly agrees that whether the Producer's net corporate surplus will permit it to provide more than fifty per cent of the financing for any picture, and if so how much more, shall be determined by the Producer in its sole discretion, and such determination by the producer shall be conclusive and binding upon the Company. * * *.

at pages 8 and 9.

FOURTH: The actual production of each of the photoplays herein provided for (subject to such arrangements as may be made between the Company and the Producer respecting the stage and other space where production is to be carried on, the time or periods of use thereof, and the particular facilities reasonably required by the Producer) shall be within the *exclusive control of the Producer,* including subject matter, selection of stories, preparation of screen play, selection of director, producer, cast, cutting and editing, and the selection of title. Final budget to be prepared by the Producer, for the production of each such photoplay, shall not be subject to the approval of the Company unless such budget shall be in excess of $850,000.00; if in excess of that sum for any photoplay, such budget shall be submitted to the Company for its approval, and thereupon the Company shall have the right to approve or disapprove of such budget as a whole, but will not withhold its approval as to any separate item or items of any such budget, and further agrees that it will not arbitrarily or unreasonably withhold its approval of such budget as a whole. The fact that the actual production cost of any given photoplay may ex-

ceed the budget thereon as prepared by the Producer, shall not be deemed a default hereunder on the part of the Producer. (Emphasis added.)

at pages 15 and 16.

SEVENTH: (a) * * *

(4½) Out of the gross receipts retained by the Company it shall pay to the Producer, by way of reimbursement, a sum equal to all costs and expenses paid or incurred by the Producer in the production of each of the photoplays herein provided for, which costs of the Producer shall include a *reasonable* allowance *for its operating and general overhead* in connection with the production of each such photoplay. Such overhead shall include such *reasonable executive salaries* as the Producer shall pay to Joseph Bernhard and Milton Sperling and other production employees; provided, however, that any part of such salaries which may properly be charged to a picture as a direct charge shall not be included in computing the Producer's general overhead. (Emphasis added.)

at pages 23 and 24.

SEVENTH: * * *

(j) After making the deductions authorized under subdivision (a) of this paragraph Seventh, the gross receipts, as herein defined, with respect to each photoplay produced hereunder, shall be retained by the Company to the extent of fifty per cent (50%) thereof, and an amount equivalent to fifty per cent (50%) thereof shall be paid to the Producer at the times and in the manner herein provided. In all cases, the deductions authorized under the provisions of this agreement shall be made and

the percentages above mentioned shall be paid, retained or determined after such authorized deductions have been made from share of the gross receipts hereinbefore provided from each photoplay as same are earned, provided that *if any photoplay shall result in a net loss* then the amount of said loss shall be recouped by the Company from the proceeds of any or all *subsequent photoplay or photoplays,* in addition to the other charges and costs which it is authorized to retain, from such subsequent photoplay or photoplays until it has recouped such loss. If, within four (4) years after the first release in the United States of America of the last photoplay produced hereunder, the Company has not recouped all of the moneys owing to it pursuant to the terms hereof; then the Producer shall pay to the Company the amount of such deficiency. * * *. (Emphasis added.)

at pages 43 and 44.

THIRTY-FIRST: If the Producer shall borrow from any banking association a substantial part of the cost (that is, that part of such cost as the Producer is obligated to pay hereunder) of producing any photoplay herein provided for, the producer shall notify the Company, in writing, to that effect. If any such loan is arranged for by the Producer, the Company having been notified thereof, the Company agrees, notwithstanding any of the preceding provisions of this agreement, that the Producer, may, for the purpose of obtaining and securing the payment of such loan pledge or hypothecate the negative of any such photoplay and execute and deliver to any such lending bank an assignment of moneys accruing from the distribution of any such photoplay in accordance with the customary pledge agreement, chattel mortgage or document of similar import demanded by

such lending bank in connection with the making of said loan. * * *.

at page 46.

If said bank loan shall be made, as aforesaid, then in order that said bank may be reimbursed for the amount of its loan, principal and interest, in accordance with the foregoing, the Company agrees that it will, at the request of the Producer and said lending bank, *subordinate the Company's* right to recoup or be reimbursed for the amount of all production and/or facilities costs and/or moneys advanced by it during the production of each of the photoplays provided for hereunder until the loan made by said lending bank, together with the interest thereon, shall have been fully paid and discharged.

If said bank, as a condition precedent to making said loan to the Producer, shall require a commitment to the effect that any photoplay to be produced hereunder, and financed in part with moneys borrowed from said bank, will *at any and all events be completed,* then, at the request of the Producer and of said bank, the Company agrees that it will, in writing, *guarantee to the said bank* that any such photoplay will be completed, notwithstanding any of the provisions of paragraph Tenth hereof relating to the default of the Producer in producing or completing any such photoplay, which said agreement guaranteeing completion shall include such terms and conditions as shall be agreed upon between the parties hereto, and as said bank may reasonably require, and shall be submitted to the Company for its approval and execution prior to the execution of this agreement if the first photoplay herein provided for shall be financed in part with any such bank loan. (Emphasis added.)

* * * * * * * * *

at page 47:

THIRTY-SIXTH: This agreement shall become effective on and after the 7th day of November 1945.

* * * * * * * * *

at page 48:

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their respective officers thereunto duly authorized, the day and year first above written.

WARNER BROS. PICTURES, INC.
By /s/ STANLEIGH P. FRIEDMAN
Vice President
Company

UNITED STATES PICTURES, INC.
By /s/ JOSEPH BERNHARD
President
Producer

Appendix F.

Extract from Exhibit 4, contract between Warner and United, dated December 6, 1947.

WARNER BROS.
PICTURES, INC.
WEST COAST STUDIOS
BURBANK, CALIFORNIA

December 6, 1947

United States Pictures, Inc.
c/o Warner Bros. Pictures, Inc.
4000 West Olive Avenue
Burbank, California

Gentlemen:

The following will constitute an agreement between us supplementing and amending certain of the provisions of that certain agreement entered into between us under date of September 28, 1945 and hereinafter referred to as the "basic agreement".

1. Under the provisions of said basic agreement, you agreed to produce *six (6)* motion picture photoplays (hereinafter referred to as the "original photoplays") during the three (3) year period immediately succeeding the date of said basic agreement, which three (3) year period will expire on September 27, 1948. You have heretofore produced three (3) of said six (6) original photoplays. (Emphasis added.)

2. In consideration of the circumstances known to each of us and of our mutual consent thereto, it is hereby

agreed between us that the three (3) year term above referred to shall be deemed extended until January 1, *1951,* and said period, as so extended, shall be hereinafter referred to as the "extended term." (Emphasis added.)

3. You hereby agree that the said remaining unproduced original photoplays will be produced during the extended term, and it is specifically agreed that you will use your best efforts to complete the production of one (1) of such remaining unproduced original photoplays during each of the calendar years of 1948, 1949 and 1950.

4. In addition to the three (3) remaining original photoplays, you hereby agree to produce, within said extended term, four (4) additional photoplays, hereinafter referred to as the "additional photoplays", and which said additional photoplays shall be produced under all of the terms and conditions provided for in the basic agreement and applicable to the remaining original photoplays, except as modified hereby or inconsistent with the provisions hereof. To the end that the production periods for each of the four (4) additional photoplays shall be spaced as evenly as possible within the extended term, the period of time between the date of this agreement and the expiration of the extended term shall be considered as divided into four (4) equal periods, and you agree to use your best efforts to produce not less than one of the four (4) additional photoplays in each of such four (4) periods.

5. You agree that, prior to the commencement of the *principal photography* of any of the photoplays herein-

before referred to and about to be produced by you, you will advise us in writing whether the same shall be a remaining original photoplay or an additional photoplay, as hereinbefore referred to. (Emphasis added.)

6. It is agreed that, with respect to the additional photoplays only, we will advance to you by way of cash or facilities (as referred to in paragraph 2 of the Basic Agreement) *one hundred per cent (100%)* of the total cost of the production of each of said additional photoplays, and for this purpose the provisions set forth in paragraph 2 and elsewhere in the Basic Agreement shall be deemed modified with respect to said additional photoplays, but only to the extent necessary to effectuate the foregoing purpose. In this connection, it is agreed that *you shall not be required to expend out of your own funds any portion of the cost of financing the production of said additional photoplays.* It is further agreed that *you shall have the right to apportion, in the manner heretofore practiced by you,* your *annual studio operating expenses* or *overhead* and to charge the same proportionately to the additional photoplay or photoplays produced in each respective year of said extended term as an *indirect cost* of said photoplay or photoplays, except that the producer's salary paid by you to the producer of any said additional photoplay shall be charged as an item of direct cost thereof. *Our obligations to advance cash or facilities, as above referred to, shall include and extend to such indirect cost.* (Emphasis added.)

* * * * * * * * *

11. We shall not be entitled to the recoupment or repayment of any moneys advanced by us in connection with any additional photoplay except only out of the proceeds from the distribution of said photoplay. Accordingly, *if there is any net loss* in connection with any additional photoplay, we shall *not* be entitled to recoup such loss from the proceeds of any *subsequent or prior additional photoplay* or *original* photoplay, *and, moreover, you shall not at any time be obligated to pay to us the amount of such deficiency or any part thereof.* (Emphasis added.)

* * * * * * * * *

Yours very truly,

WARNER BROS. PICTURES, INC.

By /s/ R. J. OBRINGER

Assistant Secretary

Approved and accepted:

UNITED STATES PICTURES, INC.

By /s/ MILTON SPERLING

Its President

Appendix G.

WARNER BROS. PICTURES, INC.
WEST COAST STUDIOS.
Burbank, California.

August 12, 1952.

Schedule H

United States Pictures, Inc.
c/o Warner Bros. Pictures, Inc.
4000 West Olive Avenue
Burbank, California

Gentlemen:

With reference to that certain agreement between us dated September 28, 1945, as heretofore modified, amended and/or extended (all hereinafter referred to as "Production Agreement"), this will confirm the following further understanding and agreement between us with respect thereto.

As of the date hereof there remain to be produced by you under said Production Agreement three (3) original photoplays and two (2) additional photoplays.

It is mutually desired that you produce for our distribution under said Production Agreement *two (2) further* additional photoplays, upon the same terms and conditions as in said Production Agreement set forth and which are applicable to the remaining two (2) additional photoplays to be produced thereunder as above referred to, and you hereby agree so to do. In order to accomplish the production of the photoplays to be produced by you under said Production Agreement, as amended hereby, additional time will be required. Therefore, in consideration of the mutual promises and agreements of each of

us, it is hereby agreed that the term of said Production Agreement shall be extended, subject to the terms and conditions in said Production Agreement contained, to January 1, *1956*.

Except as above specifically set forth, said Production Agreement, as heretofore and hereby amended, shall not be deemed otherwise changed, altered, modified or affected in any manner or particular whatsoever.

If the foregoing is in accordance with your understanding of our arrangements, kindly indicate your approval and acceptance thereof in the space hereinbelow provided.

Yours very truly,

WARNER BROS. PICTURES, INC.
By R. J. OBRINGER
Assistant Secretary

Approved And Accepted:

UNITED STATES PICTURES, INC.
By MILTON SPERLING
Its President